

INVENTORY PROCESS

A. INVENTORY REQUIREMENTS.

1. **Agency Inventories.** An agency shall prepare two annual inventories that categorize all activities performed by government personnel as either commercial or inherently governmental.
2. **Annual Requirement.** By June 30 of each year, an agency shall submit the following by electronic mail (e-mail) to OMB (a) an inventory of commercial activities performed by government personnel; (b) an inventory of inherently governmental activities performed by government personnel; and (c) an inventory summary report. An agency may provide aggregate data for uniformed services personnel and foreign nationals performing inherently governmental activities. For annual inventories, an agency shall use the format and data requirements found at the OMB web site (www.OMB.gov).
3. **OMB Review and Consultation.** OMB shall, on an annual basis, review both agency inventories and consult with the agency regarding the content of both agency inventories.
4. **Congressional and Public Notification.** After OMB review and consultation, an agency shall make both inventories available to Congress and the public unless the inventory information is classified or otherwise protected for national security reasons. OMB shall publish a notice of availability in the *Federal Register*.
5. **Inventory Summary Report.** An agency shall submit an annual inventory summary in the format in Figure A1. to identify aggregate data. The total of the two agency inventories shall reasonably equate to an agency's authorized personnel requirements. An agency shall make the annual inventory summary report available to the public unless the inventory information is classified or otherwise protected for national security reasons.

Fiscal Year XXXX Annual Inventory Summary									
AGENCY:	COMMERCIAL ACTIVITY INVENTORY					Inherently Governmental Inventory			
	FAIR Act	Uniformed Services	Foreign Nationals	Other	TOTAL	Inherently Governmental*	Uniformed Services	Foreign Nationals	TOTAL
Agency Component A									
Agency Component B									
AGENCY TOTAL									

*Minus uniformed services personnel and foreign nationals

Figure A1.

B. CATEGORIZING ACTIVITIES PERFORMED BY GOVERNMENT PERSONNEL AS INHERENTLY GOVERNMENTAL OR COMMERCIAL.

- 1. Inherently Governmental Activities.** The CSO shall justify, in writing, any designation of government personnel performing inherently governmental activities. The justification shall be made available to OMB and the public upon request. An agency shall base inherently governmental justifications on the following criteria:
 - a.** An inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves:
 - (1)** Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
 - (2)** Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
 - (3)** Significantly affecting the life, liberty, or property of private persons; or
 - (4)** Exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.
 - b.** While inherently governmental activities require the exercise of substantial discretion, not every exercise of discretion is evidence that an activity is inherently governmental. Rather, the use of discretion shall be deemed inherently governmental if it commits the government to a course of action when two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders, and other guidance that (1) identify specified ranges of acceptable decisions or conduct and (2) subject the discretionary authority to final approval or regular oversight by agency officials.
 - c.** An activity may be provided by contract support (i.e., a private sector source or a public reimbursable source using contract support) where the contractor does not have the authority to decide on the course of action, but is tasked to develop options or implement a course of action, with agency oversight. An agency shall consider the following to avoid transferring inherently governmental authority to a contractor:
 - (1)** Statutory restrictions that define an activity as inherently governmental;
 - (2)** The degree to which official discretion is or would be limited, i.e., whether involvement of the private sector or public reimbursable provider is or would be so extensive that the ability of senior agency management to develop and consider options is or would be inappropriately restricted;

- (3) In claims or entitlement adjudication and related services (a) the finality of any action affecting individual claimants or applicants, and whether or not review of the provider's action is de novo on appeal of the decision to an agency official; (b) the degree to which a provider may be involved in wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; (c) the degree to which matters for decisions may involve recurring fact patterns or unique fact patterns; and (d) the discretion to determine an appropriate award or penalty;
 - (4) The provider's authority to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the provider's need to resort to force in support of a police or judicial activity; whether the provider is more likely to use force, especially deadly force, and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas. These policies do not prohibit contracting for guard services, convoy security services, pass and identification services, plant protection services, or the operation of prison or detention facilities, without regard to whether the providers of these services are armed or unarmed;
 - (5) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons; and
 - (6) Whether the activity in question is already being performed by the private sector.
2. **Commercial Activities.** A commercial activity is a recurring service that could be performed by the private sector and is resourced, performed, and controlled by the agency through performance by government personnel, a contract, or a fee-for-service agreement. A commercial activity is not so intimately related to the public interest as to mandate performance by government personnel. Commercial activities may be found within, or throughout, organizations that perform inherently governmental activities or classified work.

C. REASON CODES FOR COMMERCIAL ACTIVITIES.

1. **Annual Procedures.** An agency shall use reason codes A-F, identified in Figure A2. below, to indicate the rationale for government performance of a commercial activity. Annual supplemental procedures for the use of these reason codes may be found at the OMB web site.

REASON CODES AND DEFINITIONS FOR COMMERCIAL ACTIVITIES INVENTORY	
Codes	DEFINITIONS
A	The commercial activity is not appropriate for private sector performance pursuant to a written determination by the CSO.
B	The commercial activity is suitable for a streamlined or standard competition.
C	The commercial activity is the subject of an in-progress streamlined or standard competition.
D	The commercial activity is performed by government personnel as the result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison, or direct conversion) within the past five years.
E	The commercial activity is pending an agency approved restructuring decision (e.g., closure, realignment).
F	The commercial activity is performed by government personnel due to a statutory prohibition against private sector performance.

Figure A2.

2. **Reason Code A.** The CSO may use reason code A to exempt commercial activities performed by government personnel from private sector performance. The CSO shall provide sufficient written justification for reason code A exemptions. These written justifications for the use of reason code A shall be available to OMB and the public, upon request.

D. INVENTORY CHALLENGE PROCESS. An agency shall implement the following inventory challenge process.

- 1. Designation of Inventory Challenge and Appeal Authorities.** The head of the agency shall designate inventory challenge authorities and inventory appeal authorities as follows:
 - a. Inventory Challenges.** Inventory challenge authorities shall be agency officials at the same level as, or a higher level than, the individual who prepared the inventory. Inventory challenge authorities shall review and respond to challenges of agency inventory decisions.
 - b. Inventory Appeals.** Inventory appeal authorities shall be agency officials who are independent and at a higher level in the agency than inventory challenge authorities, and shall review and respond to appeals of inventory challenge decisions made by inventory challenge authorities.
- 2. Submission of an Inventory Challenge.** After publication of OMB's *Federal Register* notice stating that an agency's inventories are available, an interested party shall have 30 working days to submit a written inventory challenge. The inventory challenge shall be limited to (a) the classification of an activity as inherently governmental or commercial, or (b) the application of reason codes. Function codes shall not be subject to the inventory challenge process. A written inventory challenge shall be submitted to agency inventory challenge authorities and shall specify the agency, agency component, agency organization, function(s), and location(s) for the activities being challenged.
- 3. Inventory Challenge Decision.** Within 28 working days of receiving the inventory challenge, inventory challenge authorities shall (a) validate the commercial or inherently governmental categorization or reason code designation of the activity, in a written inventory challenge decision; and (b) transmit the inventory challenge decision, including the rationale for the decision, to the interested party. Inventory challenge authorities shall include an explanation of the interested party's right to file an appeal in any adverse challenge decision.
- 4. Submission of an Appeal of an Inventory Challenge Decision.** Upon receipt of an adverse inventory challenge decision, an interested party shall have 10 working days to submit a written appeal of this decision to inventory appeal authorities.
- 5. Inventory Appeal Decision.** Within 10 working days of receipt of the appeal, inventory appeal authorities shall issue and transmit a written inventory appeal decision to the interested party. This inventory appeal decision shall include the rationale for the decision.
- 6. Inventory Changes.** When the inventory challenge process results in a change to an agency inventory, the agency shall (a) transmit a copy of the change to OMB and Congress; (b) make these changes available to the public; and (c) publish a notice of public availability in the *Federal Register*.